

C3
amended
¹²28. A method according to claim ³17 wherein the
undesired plant growth is a broadleaf weed.

¹³29. A method according to claim ³17 wherein the
undesired plant growth is a grassy weed.

REMARKS

Applicants have amended Claims 17 and 23 to remove the language related to the application rate of the triketone or dione herbicide. In addition, Applicants have added new claims 27-29. These new claims are supported, e.g., on page 7, lines 16-18. Applicants respectfully submit that these claims do not add new matter and are in proper form for examination.

Claims 17-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Seckinger et al., Stauffer, Knudsen and Sandoz. In particular, the Office has taken the position that Seckinger et al. teaches the use of dimethenamid as a herbicide, that Stauffer teaches sulcotrione in combination with additional herbicides such as atrazine, and that Knudsen and Sandoz teach the use of nitrobenzoyl bicyclooctanediones and oxazinediones as herbicides. The Office concludes therefore that, absent evidence of unexpected properties, the combination of these herbicides is obvious. Furthermore, the Office has taken the position that the results in Example 4 of the present application are not sufficient to demonstrate synergistic results between dimethenamid and triketone or dione herbicides. Applicants respectfully traverse this rejection.

The cited references do not teach or suggest that dimethenamid potentiates the herbicidal activity of triketone and dione herbicides. The present application, on the other hand, discloses the unexpected herbicidal activity demonstrated by the combination of dimethenamid


29

d

and triketone and dione herbicides. Furthermore, Applicants hereby submit concurrently herewith the declaration of William O'Neal under 37 CFR 1.132 that demonstrates the potentiating effect of dimethenamid on the triketone herbicides: sulcotrione and mesotrione.

Specifically, the O'Neal declaration demonstrates that dimethenamid in combination with these triketone herbicides produces unexpected or synergistic results when applied postemergence and preemergence to representative broadleaf and grassy weeds and that similar results would be expected for broadleaf and grassy weeds in general. The O'Neal declaration also demonstrates that based on these synergistic results, synergistic results would also generally be expected for the combination of dimethenamid and other triketone herbicides. Furthermore, because triketone herbicides and dione herbicides are both HPPD inhibitors and have the same mode of action, the O'Neal declaration asserts that synergistic results would also generally be expected for the combination of dimethenamid and dione herbicides. The cited references do not teach or suggest the unexpected herbicidal activity exhibited by the combination of dimethenamid and triketone and dione herbicides. Therefore, Applicants respectfully submit that the combination of the cited references does not teach or suggest the claims as now presented and respectfully request that the rejection under 35 U.S.C. § 103 be withdrawn.

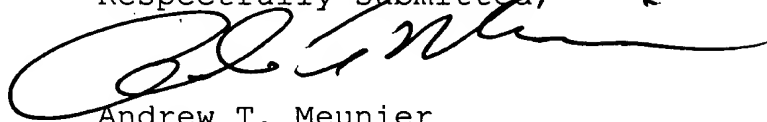
Applicants have made a significant contribution to the art neither disclosed nor suggested in any cited reference. It is submitted that all claims are in condition for immediate allowance which action is respectfully urged. Should the Examiner have questions



In re: Fenderson et al.
Serial No. 08/911,926
Filed: August 15, 1997
Page 4

or suggestions, it is requested that he telephone the undersigned to expedite examination of this case.

Respectfully submitted,

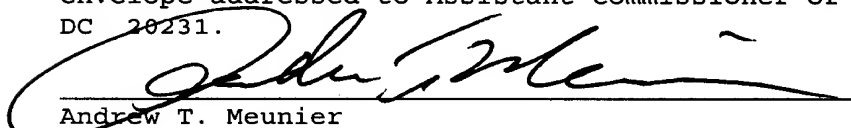


Andrew T. Meunier
Registration No. 40,726

Alston & Bird LLP
Post Office Drawer 34009
Charlotte, North Carolina 28234
Telephone: (704) 331-6000
Facsimile: (704) 334-2014
ATM:ek:4375590v1

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited today with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner of Patents, Washington, DC 20231.



Andrew T. Meunier

Date of Signature: July 19, 1999